Supreme Court, U.S.
FILED

No. 04-04 405 SEP 17 2004

IN THE OFFICE OF THE CLERK

Supreme Court Of the United States

MARGARET HUDSON,
Petitioner,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,
Respondent.

Petition for Writ of Certiorari to the Supreme Court of Tennessee

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When a homeowner was never afforded procedural due process in regard to the promulgation of an historic zoning district ordinance whether, under the Supremacy Clause, that homeowner's 42 U.S.C. §1983 claim can be barred by Tennessee law which precludes a zoning ordinance from being nullified by procedural irregularities after the ordinance has been in effect for ten or more years.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Margaret Hudson, respectfully requests that a Writ of Certiorari be issued to review the judgment of the Supreme Court of Tennessee in this case.

OPINIONS BELOW

The order of the Supreme Court of Tennessee which denied Margaret Hudson's request for permission to appeal from the opinion rendered by the Tennessee Court of Appeals in this matter is attached as Appendix A. The opinion rendered by the Tennessee Court of Appeals in *Metropolitan Government of Nashville and Davidson County v. Margaret Hudson*, Tenn. Ct. App. Case No. M2002-02847-COA-R3-CV, is attached as Appendix B. The order and amended order entered by the Chancery Court for Davidson County, Tennessee in *Metropolitan Government of Nashville and Davidson County v. Margaret Hudson*, Case No. 98-406-I, which granted the municipality summary judgment, are attached as Appendix C.

STATEMENT OF JURISDICTION

The order of the Supreme Court of Tennessee which denied Petitioner an appeal from the opinion rendered by the Tennessee Court of Appeals was entered on June 21, 2004. [App. A]

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a) and Rule 10(c) of the Rules of the Supreme Court of the United States,

for a Writ of Certiorari to review the opinion rendered by the Tennessee Court of Appeals which relied upon Tennessee law to bar a 42 U.S.C. §1983 claim in violation of the Supremacy Clause of the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution provides in relevant part: "...nor shall any state deprive any person of life, liberty or property, without due process of law ..."

Title 42, United States Code §1983 provides in pertinent part:

> "Every person who, under the color of any statute, ordinance, regulation, custom or usage of any State..., subjects, or causes to be subjected, any citizen of the United States... to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress..."

The Supremacy Clause of Article VI of the United States Constitution provides that:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be

made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding."

STATEMENT OF THE CASE

A. Proceedings in the Courts Below

Mrs. Margaret Hudson is 82 years old and has resided at 1014 Lawrence Avenue in Nashville, Tennessee since 1966. [Appendix M, ¶1, p. 48a]

In 1980 the Woodland-in-Waverly National Historic District ("District A") was established in Nashville, Tennessee which included 85 houses, 10 of which were not considered to be historic structures. [Appendix M, ¶3 & 4, p. 48a-49a] No zoning restrictions applied to the historic structures in the Woodland-in-Waverly Historic District at this time. Mrs. Hudson's White Avenue property was not located in the Woodland-in-Waverly Historic District. [Appendix M, ¶3, p. 48a]

In 1982 Mrs. Hudson and her late husband purchased a home located at 2208 White Avenue for $14,770 as an investment for her retirement years. [Appendix M, ¶2, p. 48a]

On May 28, 1985 the Metropolitan Historic Zoning Commission mailed an information packet

on historic zoning including draft guidelines to all of the proposed district's residents and announced a public hearing set for June 13, 1985 to discuss the designation and review guidelines. [Appendix B, p. 5a] For purposes of the summary judgment motion in this case, it was undisputed that Mrs. Hudson never received actual notice of any meetings, public hearings or proceedings related to the adoption of the Woodland-in-Waverly Historic Zoning District Guidelines. [Appendix E & F, No. 9, pp. 25a, 27a] At the time notice was given, Mrs. Hudson and her late husband were not residents of the proposed district. [Appendix D, No. 2, p. 19a] Mrs. Hudson's mailing address as owner of the White Avenue property was listed with the Metropolitan Property Assessor and Metropolitan Trustee for payment of taxes as 1014 Lawrence Avenue, Nashville, TN 37204 and not the White Avenue address. [Appendix M, ¶8, p. 51a] Information sent by the Respondent to Mrs. Hudson was sent to the White Avenue property where she did not live.

The Metropolitan Council passed Council Bill No. 085-1021 which created the Woodland-in-Waverly Historic Zoning District on November 19, 1985. [Appendix E & F, No. 7, pp. 24a and 27a] The mayor signed the bill on November 25, 1985. [Appendix E & F, No. 8, pp. 24a & 27a] The Woodland-in-Waverly Historic Design Guidelines were adopted by the Metropolitan Historic Zoning Commission on November 25, 1985. [Appendix E & F, No. 6, pp. 24a & 27a] These regulations restrict the repair and maintenance of historic homes. While the Design Draft Guidelines

circulated in 1985 did not contain a specific prohibition regarding the installation of vinyl siding, the final Design Guidelines adopted by the Metropolitan historic Zoning Commission on November 25, 1985 prohibited the use and installation of vinyl siding on historic homes in the District. [Appendix D, No. 5, p. 20a]

The Woodland-in-Waverly Historic Zoning District not only included the houses in District A, the original Woodland-in-Waverly National Historic District but also an additional 72 homes in "District B". [Appendix M, ¶4, p. 49a] Mrs. Hudson's White Avenue property is located in District B. [Appendix M, ¶4, p. 49a]

Of the 85 homes included in District A of the Woodland-in-Waverly Historic Zoning District, 75 were considered to be historic and 10 nonhistoric in 1985. [Appendix E & F, No. 12, pp. 25a, 27a] Of the 72 homes in "District B," 27 were considered to be historic and 45 nonhistoric in 1985. [Appendix E & F, Nos. 11 & 13, pp. 25a-27a] In all, a total of 102 historic homes were covered by the zoning regulations promulgated by the Metropolitan Historic Zoning Commission in 1985 in regard to the Woodland-in-Waverly Historic Zoning District.

During the time that Mrs. Hudson owned the White Avenue property, she had had maintenance performed on the house, including re-roofing and repainting the exterior wood siding at least twice. [Appendix M, ¶10, p. 53a] Nothing in her management of the property or contact with persons in the neighborhood led her to

believe that she was restricted or prohibited in the manner in which she maintained the property. [Id.]

In late May or early June, 1996 Mrs. Hudson hired a contractor to install vinyl siding on the White Avenue property at a cost of $7,000, [Appendix M, ¶12, p. 53a] The vinyl siding was installed over a period of several days. [Appendix M, ¶13, p. 54a]

In late December, 1996 or early January, 1997, Mrs. Hudson was served with a notice to appear before the Metropolitan Historic Zoning Commission to answer its complaint against her for installing vinyl siding on the White Avenue property. [Appendix M, ¶14, p. 54a] Receipt of this notice was the first time that either Mrs. Hudson or her late husband, James T. Hudson, ever had notice or other information from the Metropolitan Government or anyone else about the formation of an historic zoning district that included their White Avenue property or about the adoption of the historic district design guidelines by the Metropolitan Historic Zoning Commission that applied to the White Avenue property. [Appendix M, ¶7, p. 52a]

The expense of removing the vinyl siding on the White Avenue property and repairing and restoring the wooden siding on the house to its original condition is in the range of $18,000 to $40,000. [Appendix E & F, No. 4, pp. 23a - 24a, 27a] For tax purposes the White Avenue property has been appraised as being worth $45,200. [Appendix M, ¶12, p. 53a]

Of the total of 72 houses in the District B Section of the Woodland-in-Waverly Historic Zoning District, 30 are considered post-1970 type brick duplex houses. Of the 42 remaining houses, 14 have vinyl or aluminum siding, 11 have asbestos shingle siding and 1 has a mixed brick and shingle siding, all of which are not permitted under the Woodland-in-Waverly Historic Zoning District guidelines. [Appendix E & F, No. 13, pp. 26a - 27a]

On February 10, 1999, the Metropolitan Government filed suit in the Chancery Court for Davidson County, Tennessee against Mrs. Hudson, seeking an injunction to force her to remove the vinyl siding that had been installed on her White Avenue property and to restore the property to its original condition.

Mrs. Hudson filed an Answer and a Counter Complaint in which she alleged that her constitutional right to procedural due process guaranteed by the Fourteenth Amendment of the United States Constitution had been violated by her failure to receive notice concerning the inclusion of her White Avenue property in the Woodland-in-Waverly Historic Zoning District and notice of the zoning regulations which limited how she could maintain and repair her White Avenue property. [Appendix H, pp. 32a - 37a] Mrs. Hudson asserted a 42 U.S.C. §1983 claim against the Respondent for the violation of her constitutional rights. [Appendix H, Counter Complaint, p. 35a - 36a]

The Chancery Court for Davidson County, Tennessee granted summary judgment to the Metropolitan Government of Nashville and Davidson County, finding that the White Avenue property was located in the Woodland-in-Waverly Historic District, that the design guidelines were properly adopted, valid and enforceable, that the guidelines prohibit installation of vinyl siding and that Mrs. Hudson's installation of vinyl siding violated these guidelines. The trial court enjoined Mrs. Hudson to remove all vinyl siding from the house. [Appendix C, Order, pp. 12a - 13a] The trial court later entered an Amended Order which dismissed Mrs. Hudson's constitutional claims and her 42 U.S.C. §1983 action. [Appendix C, Amended Order, pp. 15a - 16a]

Mrs. Hudson timely filed a Notice of Appeal which stated, in pertinent part, that she was appealing the dismissal of her 28 U.S.C. §1983 claim to the Tennessee Court of Appeals. [Appendix L, p. 45a]

The Tennessee Court of Appeals affirmed the trial court's grant of summary judgment to the Metropolitan Government of Nashville and Davidson County. Although it recognized that the Metropolitan Government of Nashville and Davidson County had failed to comply with Tennessee law in regard to the notice requirements governing the adoption of the Historic Zoning Commission design guidelines, it affirmed the trial court's dismissal of Mrs. Hudson's 42 U.S.C. §1983 claim because Tennessee law provides that "after long public acquiescence in the substance of an ordinance,

public policy does not permit ... an attack on the validity of the ordinance because of procedural irregularities," citing *Hutcherson v. Criner*, 11 S.W.3d 126, 134 (Tenn. Ct. App. 1999). [Appendix B, p. 9a] Since the historic designation and review guidelines were adopted in 1985 and were challenged by Mrs. Hudson "well over ten years later," the Tennessee Court of Appeals affirmed the trial court's dismissal of Mrs. Hudson's constitutional claims. [Appendix B, p. 10a]

In an order entered on June 21, 2004, the Tennessee Supreme Court denied Mrs. Hudson permission to appeal from the opinion rendered by the Tennessee Court of Appeals. [Appendix A, p. 1a]

B. Mrs. Hudson's Procedural Due Process Claim

The Respondent was under constitutional due process constraints when it promulgated the zoning regulations for the historic houses in the Woodland-in-Waverly Historic Zoning District. These regulations did not affect everyone in the District equally. Rather, more than 62% of the houses in "District B" were not considered to be historic homes in 1985. [App. E and F, No. 11, pp. 27a, 27a] Mrs. Hudson's property was one of only 27 homes considered to be historic in "District B". [App. M, ¶4, p. 49a] 75 of the 85 homes in "District A" were considered to be historic in 1985. [Appendix E & F, No. 12, pp. 25a, 27a] Out of a total of 157 homes in both

Districts, 102 were considered to be historic in 1985. [App. E & F, Nos. 11-13, pp. 25a - 27a]

While the law is clear that procedural due process constraints do not apply to statutes that apply equally to all concerned, *Bi-Metallic Inv. Co. v. State Board of Equalization*, 239 U.S. 441, 445 (1914), procedural due process requirements do apply when a zoning ordinance is promulgated that affects a relatively small number of persons who are exceptionally affected in each case on individual grounds. *Londoner v. Denver*, 210 U.S. 373, 385 (1908); see, *Harris v. County of Riverside*, 904 F.2d 497, 501-502 (9th Cir. 1990) (analyzing the distinction between situations in which *Bi-Metallic* governs when no procedural due process is required and situations in which *Londoner* mandates that individuals are entitled to receive procedural due process.)

In the case at bar, 102 homes in the entire Woodland-in-Waverly Historic Zoning District were considered to be "historic" in 1985 and subject to the zoning regulations. These regulations subjected the owners of these historic buildings to onerous requirements in repairing and maintaining their buildings. As one commentator has noted "...the costs of maintaining, restoring and repairing old buildings increase with time. What begins as a modest measure for the preservation of decay advances to a very costly and burdensome restoration payout, and eventually the need for complete reproduction of the original structure." Lewinshon-Zamir, 20 HARVARD JOURNAL OF LAW AND PUBLIC POLICY, The Conservation

Game: The Possibility of Voluntary Cooperation in Preserving Buildings of Cultural Importance, 733, 739 (1997).

The zoning guidelines at issue dictate how an owner can maintain and repair their home. The facts in this case lean much greater toward the *Londoner* case than the *Bi-Metallic* case. The Respondent was bound by procedural due process constraints when it promulgated the zoning regulations in controversy that applied to the Woodland-in-Waverly Historic Zoning District. This conclusion is buttressed by the fact that T.C.A. §13-7-406 requires that prior to the establishment of any historic district, an historic zoning commission is required to adopt a set of review guidelines and that reasonable notice and opportunity for public comment is required before any review guidelines can be adopted. The Metropolitan Code promulgated by Respondent mandates that in regard to the adoption of historic zoning design guidelines, that no public hearing can be conducted unless "at least 21 days prior to the public hearing, the owner of the subject property and all other property owners within the distances prescribed in this article have been given notice by mail of the time, date and place of the public hearing and that notice in a daily newspaper of general circulation in Davidson County is published no less than 21 days and no more than 30 days before the hearing." [App. B, p. 9a] There is no dispute that the Respondent never complied with these notice requirements in regard to the Woodland-in-Waverly Historic Zoning District and its review guidelines.

Further, Mrs. Hudson's interest in having the right to use and repair her White Avenue property is a property interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Under Tennessee law a landowner in occupying his property "may use his land according to his own judgment without being answerable to an adjoining owner, unless by such occupation he either intentionally or for want of reasonable care and diligence inflicts upon him an injury." *Humes v. Mayor and Aldermen of Knoxville,* 20 Tenn. (1 Hump.) 403 (1839). The manner in which one chooses to use their property is a property right in Tennessee. This Court has applied the Due Process Clause to protect a property owner's right to use his or her property. See, *Washington ex rel. Seattle Title Trust Co. v. Roberge,* 278 U.S. 116, 121 (1928) (The right of [an owner] to devote [his] land to any legitimate use is properly within the protection of the Constitution."); see also, *Harris v. County of Riverside,* 904 F.2d 497 (9th Cir. 1990) (holding that the loss of use of property because of a rezoning of that property constituted a taking in violation of the constitutional right to procedural and substantive due process.)

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane*

v. Central Hanover Bank & Trust Co., Trustee, 339 U.S. 306, 314 (1950). "... [W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it ..." *Id.*, 339 U.S. at 315.

In the case at bar the respondent sent notice by mail to people residing in the Woodland-in-Waverly Historic Zoning District. Unfortunately, Mrs. Hudson and her late husband lived outside the district. The Hudsons' residential address, 1014 Lawrence Avenue, Nashville, Tennessee, was listed for the White Avenue property in the Metropolitan Property Assessor's Office and the Metropolitan Trustee's Office as owners of record for tax payment purposes. [App. M, ¶8, p. 52a)

In several cases this Court has held that constructive service violates the requirements of procedural due process when the governmental entity has the name and address of the person entitled to notice in its deed and tax records. See, *Walker v. City of Hutchinson*, 352 U.S. 112 (1956); *Schroeder v. New York City*, 371 U.S. 208 (1962); and *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983).

The Respondent's sending of notice of a June 13, 1985 public hearing and proposed guidelines which contained no prohibition of the use of vinyl siding on historic homes by mail to individuals in the Woodland-in-Waverly Historic Zoning District at a time when Mrs. Hudson's

residential address, 1014 Lawrence Avenue, Nashville, Tennessee, was listed as owner of record of the White Avenue property with the Metropolitan Property Assessor's Office and the Metropolitan Trustee's Office was constitutionally insufficient. Anyone who really wanted to convey actual notice to Mrs. Hudson of the zoning regulations that would be applied to her White Avenue property would have sent correct information to her residential address where it would have reached her and would have given her further notice that vinyl siding would be prohibited on historic homes.

The Tennessee Court of Appeals dismissed Mrs. Hudson's 42 U.S.C. §1983 claim based upon its determination that under Tennessee law, after a period of 10 years has elapsed, the public is deemed to have acquiesced in zoning regulations and that Tennessee courts will not declare an ordinance invalid because of procedural irregularities in the promulgation of that ordinance. [App. B, pp. 9a - 10a] We submit that this holding violates the Supremacy Clause of the United States Constitution.

It is important to note that the statute of limitations has never been raised in this case. [App. I, Answer to Counterclaim, pp. 38a - 39a]. The Tennessee Court of Appeals appears to have fashioned a "statute of repose" that bars a legitimate procedural due process claim under a theory that the public has acquiesced in the constitutional violation.

Mrs. Hudson is seeking to recover under 42 U.S.C. §1983 for the costs of complying with the zoning regulation in controversy. Since the respondent violated Mrs. Hudson's constitutional right to procedural due process which resulted in her ignorance of the zoning ordinance in controversy, it is only fair that the Respondent be held liable for the expenses Mrs. Hudson will incur when she is forced to comply with this zoning regulation. This is basic, fundamental justice.

REASON FOR GRANTING THE WRIT

I. The Tennessee Court of Appeals Has Decided an Important Question of Federal Law that Conflicts with Relevant Decisions of this Court.

A. This appeal presents an important question of law.

42 U.S.C. §1983 has become important in challenges to municipal land use decisions during the last few years primarily because it allows a plaintiff to recover damages. "In recent times, actions challenging local land use decisions and brought under 42 U.S.C. §1983 have been increasingly frequent and important." WILLIAMS, AMERICAN LAND PLANNING LAW, §99.1, 183-184 (2003 Rev. Ed.) "The traditional remedy usually employed in land use decisions has, of course, been invalidation of an ordinance or other

action interfering with protected rights. Less frequently, a court has been willing to mandate that a municipality actually issue a permit or take some form of action. What has not, though, to any substantial degree, been available as a form of relief has been damages, although some courts have in the past awarded damages, on the theory of inverse condemnation, and some are beginning to do so on anti-trust grounds. The evolution of §1983, however, means damages will be available when a land use decision is held to violate protected rights." WILLIAMS, AMERICAN LAND PLANNING LAW, §99.5, p. 191 (2003 Rev. Ed.)

While the decision rendered by the Tennessee Court of Appeals in this matter is the only case of which counsel is aware that has relied on state law in dismissing a 42 U.S.C. §1983 claim for a violation of procedural due process guaranteed by the Fourteenth Amendment, state courts are split on the issue of whether a zoning ordinance can be held void for procedural irregularities, including lack of notice to property owners, if that ordinance has been in effect for 10 or more years. One line of cases, epitomized by *LaSalle National Bank vs. City of Evanston*, 179 N.E.2d 673 (Ill. 1962) holds that "[a] zoning ordinance cannot be sustained if in violation of the Constitution, no matter how long or by whom it has been recognized as legal and the fact that the purchaser or his grantor may have acquiesced in the classification will not estop him from testing its validity." 179 N.E.2d at 676. See, *Carter v. City of Salina*, 773 F.2d 251, 254 (9th Cir. 1985) ("It is the general rule that zoning ordinances are in derogation of common

law property rights and find their authority through the state police power; accordingly, municipalities and other political subdivisions must scrupulously comply with statutory requirements, including notice and hearing, in order to provide due process of law.") (Applying Utah law) These courts emphasize that procedural defects regarding an absence of notice of a public hearing are the type of defects that inherently lead to a delay in the bringing of a challenge to a zoning ordinance. *Pennington County v. Moore,* 525 N.W.2d 257, 260 (S.D. 1994)

The Tennessee Court of Appeals, in dismissing Mrs. Hudson's 42 U.S.C. §1983 claim, followed a contrary line of authority which precludes an attack on the validity of a zoning ordinance because of procedural irregularities such as lack of notice of a hearing after the ordinance has been in effect 10 or more years. *Fifth Church of Christ, Scientist v. W. F. Pigg & Son,* 122 P.2d 887 (Colo. 1942); *Taylor v. Schlemmer,* 183 S.W.2d 913 (Mo. 1944). While not allowing a zoning ordinance to be attacked on procedural due process grounds, these jurisdictions will allow a property owner to raise a substantive due process challenge to the zoning ordinance in controversy. See, *Taylor v. Schlemmer, supra* at 917, holding that the zoning ordinance was reasonable and not arbitrary.

Given the split in jurisdictions on the validity of a procedural due process claim after a zoning ordinance has been on the books for 10 or more years and the increasing use of 42 U.S.C.

§1983 as a vehicle to recover damages for persons aggrieved by a municipal land use decision, the issue presented in this case is an important one the courts will be facing in the future.

B. The decision rendered by the Court of Appeals conflicts with relevant decisions of this Court.

Article VI of the Constitution provides that "the laws of the United States shall be the supreme law of the land; ... anything in the constitution or laws of any state to the contrary notwithstanding." Art. VI, cl 2. Thus, since "...*McCulloch v. Maryland*, 4 Wheat 316, 427 (1819), it has been settled that state law that conflicts with federal law is without effect." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516, (1992). In applying the Supremacy Clause, this Court has noted that "our office is not to pass judgment on the reasonableness of state policy. It is instead to decide if a state rule conflicts with or otherwise stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the federal law." *Lividas v. Bradshaw*, 512 U.S. 107, 120 (1994).

The utilization of 42 U.S.C. §1983 to recover damages for a procedural due process violation in regard to a municipal land use decision is exactly the purpose for which that statute was promulgated. When Congress promulgated this legislation as §1 of the Ku Klux Act of April 20, 1871, 17 Stat. 13, "[I]ts purpose

[was] plain from the title of the legislation, 'An Act to enforce the Provisions of the Fourteenth Amendment of the Constitution of the United States and other Purposes.'" *Monroe v. Pape*, 365 U.S. 167, 171 (1961). This Court has noted that one of the several purposes of 42 U.S.C. §1983 was to "provide a remedy where state law is inadequate." *McNeese v. Board of Education*, 373 U.S. 668, 671-672 (1963). As the decision rendered by the Tennessee Court of Appeals in this case makes abundantly clear, state law provides Mrs. Hudson with no remedy for the violation of her right of procedural due process guaranteed by the Fourteenth Amendment in this case.

The Tennessee state law relied upon by the Tennessee Court of Appeals for its dismissal of Mrs. Hudson's 42 U.S.C. §1983 claim directly conflicts with and undermines the objectives of that federal legislation. Indeed, as noted above, one of the primary purposes of the promulgation of 42 U.S.C. §1983 was to create a remedy when state law failed to provide one for a violation of the constitutional rights guaranteed by the Fourteenth Amendment of the United States Constitution.

The decision rendered by the Tennessee Court of Appeals conflicts with the decisions rendered by this Court which have interpreted and applied the Supremacy Clause of the United States Constitution and undermines a primary federal objective sought to be achieved in the promulgation of 42 U.S.C. §1983.

CONCLUSION

Wherefore, since the Tennessee Court of Appeals' decision directly conflicts with 42 U.S.C. §1983 and undermines a primary federal objective in the promulgation of that statute and, thus, conflicts with relevant decisions by this Court interpreting the Supremacy Clause of the United States Constitution, the Court is urged to grant this Petition for Writ of Certiorari, reverse the judgment rendered by the Tennessee Court of Appeals and remand this case to the Chancery Court for Davidson County for a trial on the merits.

Respectfully submitted,

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